

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION**

Alfie T. Sloane,

Case No. 4:13CV2052

Petitioner

v.

ORDER

Donald Morgan, Warden,

Respondent

This is a habeas corpus case under 28 U.S.C. § 2254. Following reference to a United States Magistrate Judge for a Report and Recommendation, December 2, 2014, the Magistrate Judge submitted a Report and Recommendation recommending denial of the petition. (Doc. 18).

The petitioner has not filed a timely objection, though being notified of his need to do so.

On *de novo* review of the Report and Recommendation, I find that the Magistrate Judge's recommendation of dismissal is well-taken.

To summarize briefly the Magistrate Judge's salient and dispositive conclusions:

1. The petitioner, contrary to the requirements of the Anti-Terrorism and Effective Death Penalty Act, (AEDPA), 28 U.S.C. § 2254(d)(1), failed to file his petition within one year of his conviction becoming final.

This is correct. The one year limitations period began running on February 18, 2010. Petitioner did not file his petition until September 17, 2013. I must therefore dismiss his petition as untimely.

2. No basis exists on which the petitioner can contend that he could not discover "the factual predicate of [his habeas corpus] claim or claims," *id.*, until a later date.

This is correct. The factual gravamen of all petitioner's claims was known to him long before the statute of limitations under AEDA began to run. As the Magistrate Judge's Report and Recommendation points out, "by their very nature, these claims are based on facts that would have been known to [petitioner] at the time of sentencing in August 2006." (Doc. 18, at 21).

3. There is no basis for applying a period of equitable tolling.

This is correct. Petitioner contends that his mental incapacitation entitles him to a period of equitable tolling. As the Magistrate Judge pointed out, his contention must fail because of its conclusory and unsupported nature.

I conclude that, even if the petitioner had filed timely Objections to the Magistrate Judge's Report and Recommendation, he could not have prevailed, as there is no merit to his petition.

It is, therefore,

ORDERED THAT:

1. The Report and Recommendation of the Magistrate Judge be, and the same hereby is adopted as the order of this court; the Clerk shall enter a dismissal accordingly; and
2. An Appeal from this order could not be taken in good faith, and reasonable jurists could not reasonably disagree with this order; accordingly, no certificate of appeal shall issue, and no appeal shall be taken without prepayment of the requisite filing fee.

The Clerk shall issue an order accordingly.

So ordered.

/s/ James G. Carr
Sr. U.S. District Judge